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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/722,936	11/27/2000	David Vardi	P/1318-115	5045

2352 7590 12/30/2004

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NEW YORK, NY 100368403

EXAMINER

DAS, CHAMELI

ART UNIT	PAPER NUMBER
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2122

DATE MAILED: 12/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/722,936

Applicant(s)

VARDI ET AL.

Examiner

CHAMELI C DAS

Art Unit

2122

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-46 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Art Unit: 2122

1. This action is in response to the amendment and argument filed on 8/24/04.
2. Claims 37 and 42 have been amended.
3. Claims 1-46 have been rejected.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 37 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Barritz, US 5,499,340.

As per amended claims 37 and 42, Barritz (US 5,499,340) discloses:

- substantially only by reference to the entry-gate load modules stored in the table (col 5, lines 1-5, col 5 lines 66-67, col 6, lines 1-2), where "**70a, 70b ... 70n** is associated with an **program module by special flags**, naming convention or other wise"), these modules **70a, 70b.... 70n are the entry-gate load modules** because these modules are associated with specific software product (col 5, lines 56-60), and the system can scans or read **only the modules (substantially only)** which are associated with these entry-gate load modules (col 5 lines 66-67, col 6 lines 1-2).

For the rest of the limitations see the rejection in the previous office action mailed on 3/18/2004.

Response to the argument

5. The applicant's argument filed on 9/27/04 have been fully considered but they are not persuasive. In the Remarks, the applicant has argued in substance:

(1) Barritz (US 5,499,340) does not teach "**contemporaneously** converts data records reflecting the execution of the load modules to data records".

Response:

(1) Barritz (US 5,499,340) discloses a method for **contemporaneously** converting data records reflecting the execution of the load modules to data records which reflect the usage of products on the computer (abstract, lines 1-6, "A method and apparatus **for monitoring events relating to executable program modules**, for example, **the usage of computer programs**, and automatically recording each monitored event. The system is provided with a knowledge/data base of information **relating module names and the products associated with those modules**"), (abstract, lines 12-15, "A **monitoring component monitors events, e.g. invocations, of program modules**, recording these events in a event log. Finally, a reporting component correlates these log files and produces an output report **correlating the monitored events and the products** stored on the storage device"). This monitoring program which correlates the module with the usage of the product of the computer **runs continuously (col 10, lines 29-30, "it is preferred that monitoring program 22 is run continuously, rather than for sampling period")**, it shows that monitoring program "**contemporaneously**" produces a report reflecting system usage as claimed.

Art Unit: 2122

(2) Barritz (US 5,499,340) discloses "load modules" but does not disclose "entry-gate load modules" and "substantially only" by reference to the entry-gate load modules stored in the table.

Response:

(2) Barritz (US 5,499,340) discloses "entry-gate load modules" which are special load modules associated with the special flags (col 5, lines 1-6, "the entries 70a, 70b ... 70n as referring to program modules or non-executable files varies. An operating system 25 may *indicate that a directory entry 70a, 70b ... 70n* is associated with an *program module by special flags*, naming convention or other wise"), these modules 70a, 70b.... 70n are the entry-gate load modules and the system can scans or read *only the modules* which are associated with these entry-gate load modules (col 5, lines 66-67, col 6, lines 1-2, "In a preferred embodiment, the file reader 12B would *scan only the modules 80a, 80b . . . 80n associated with each directory entry 70a, 70b . . . 70n*"), where "70a, 70b . . . 70n" are the entry-gate load modules as claimed.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: 2122

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chameli Das whose telephone number is 571-272-3696

The examiner can normally be reached on Monday-Friday from 7:00 A.M. to 3:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Tuan Dam can be reached at 571-272-3695. The fax number for this group is (703) 872-9306.

An inquiry of general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-9600.

Chameli C-D
CHAMELI C. DAS
PRIMARY EXAMINER

12/22/04